

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



ATTORNEY GENERAL

September 14, 2012

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Ste. 402
Washington, D.C. 20004

Dear Chairman Mendelson:

This letter responds to your August 24, 2012 letter regarding instances, highlighted by a recent *Washington Post* article, in which the District's Department of Motor Vehicles (DMV) has revoked the drivers' licenses of District residents convicted in Virginia of "reckless driving" because they were speeding there in excess of 80 miles per hour. You requested that I advise the DMV to cease these automatic revocations and restore drivers' licenses where speeding is the sole basis for the conviction.

As you requested, I have examined the applicable law and regulations and discussed the matter with DMV's Director and General Counsel. I find that the Director does have the authority to revoke licenses of D.C. residents upon the basis of a conviction of "reckless driving" in another state, but, as you suggest, she also has discretion simply to award points for speeding in these circumstances, which would not necessarily result in a suspension or revocation of the license. While the Director was aware that she had some discretion in this situation, she used it sparingly because of ambiguities in the law. However, the Mayor and I have urged her to re-examine the cases where revocation has occurred in the past year and to follow procedures, as described below, to ensure that a correct and just determination has been made in each case. She has graciously agreed to do so, and her office will now proactively reach out to District residents who have had their drivers' licenses revoked based upon reckless driving convictions in other jurisdictions to allow them the opportunity to seek a reconsideration of the revocation.

In light of what has occurred in the recent past, we believe it would be beneficial to have a legislative clarification by the Council to help inform the exercise of discretion by the Department in the future. The Gray Administration believes that the Cheh bill is a good first step, but suggests that there should be some modifications for it to be fully effective in resolving this issue.

The DMV's underlying authority flows from Article IV(b) of the Driver License Compact (codified at D.C. Official Code § 50-1001), which requires "the licensing authority in the home state [to] give such effect to the [out-of-state] offense as is provided by the laws of the home state." In the District, "reckless driving" results in 12 points, which requires revocation of the

license. See 18 DCMR §§ 303.2(j) and 303.5. Further, under 18 DCMR § 300.6, “The Director is authorized to suspend or revoke the license of any resident of the District...upon receiving notice of the conviction...of that person in another jurisdiction of an offense... in the other jurisdiction, which, if committed in the District would be grounds for suspension or revocation of the license of a driver.” DMV’s giving effect to a foreign reckless driving conviction is a matter of discretion. Thus, the Director acted within her authority in revoking the license of those convicted in Virginia of what was denominated in Virginia as “reckless driving.” Further, as you know, deference is usually paid to a Director’s construction of a statute and regulations by the agency charged with its interpretation and enforcement based on the agency’s presumed expertise. See *United States Parole Comm’n v. Noble*, 693 A.2d 1084, 1096 (D.C.1997), *adopted on reh’g*, 711 A.2d 85 (D.C.1998) (*en banc*), *Smith v. District of Columbia Dep’t of Emp’t Servs.*, 548 A.2d 95, 97 (D.C.1988) (citations omitted).

In this situation, however, this is not necessarily the end of the analysis. The regulations also provide that “Traffic offenses certified as having been committed by a District licensee in another jurisdiction shall be identified on the licensee’s driving record as the most similar District traffic offense.” 18 DCMR § 303.12 (emphasis added). And they further provide that the Director may “redesignate an offense assigned to a driving record pursuant to section 303.12 if the licensee demonstrates that the traffic offense committed in another jurisdiction on its facts would have been a considered a different offense if committed in the District.” 18 DCMR § 303.13; see also 18 DCMR § 300.7 (“The [DMV] Director may give the same effect to the conduct of a resident in another jurisdiction as would be provided by the laws of the District if the conduct had occurred in the District.”) (emphasis added).

Procedurally, while 18 DCMR §300.2 generally provides that the Director is authorized, “after giving notice and an opportunity for a hearing, to suspend or revoke the license of any person upon a showing by records or other sufficient evidence, of any grounds for suspension or revocation set forth in the chapter,” (emphasis added) §1005.4 of 18 DCMR provides that no hearing is required when the Director’s action is made mandatory by law or where the person has previously been afforded an opportunity with appropriate notice for a hearing. While individual drivers convicted of “reckless driving” were given 10 days’ notice of the proposed revocation and were given the opportunity to submit written explanations and requests to avoid revocation, none appears to have been granted a hearing. That was because the Director reasonably believed that §1005.4 applied to these cases. I believe at this point a hearing or its equivalent, such as the submission of written requests and materials, is required because the action is not made mandatory by law and because the opportunity for a hearing in Virginia did not serve the same purposes and was not addressed to the same issues that are pertinent to the DMV in the District. The revocation was not mandatory because the phrase “reckless driving” in the regulations should be construed to have the same meaning as in the D.C. statute, and not cover convictions where other jurisdictions give very different meanings to the phrase.

Significantly, Virginia defines “reckless driving” in a very different manner from the District. The District defines “reckless driving” as “careless and heedless” in “willful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger person or property.” D.C. Official Code § 50-2201.04. Virginia has

more than 20 offenses which may constitute "reckless driving," one of which is "driving "in excess of eighty miles per hour regardless of the applicable maximum speed limit." Va. Code Ann. § 46.2-862. Thus, the hearing in Virginia, which most speeders waive upon payment of the fine, may only be about whether the person was speeding in excess of 80 miles per hour. In D.C., unlike in Virginia, it would be necessary to know if there was any "willful and wanton" disregard of the rights or safety of others apart from the speeding and for purposes of assessing points, how far above the posted speed limit the D.C. licensed driver was going. While a hearing is generally defined to mean a proceeding of "relative formality," we believe that within the spirit of the regulations and consistent with the past practices of the DMV, a submission of written requests and materials going forward would be sufficient in most cases to correct the situation.

I believe it is also significant for our analysis that in Virginia a licensed Virginia driver who is convicted of "reckless driving" in addition to a fine is awarded 6 points on an 18-point scale, and thus does not for that offense alone have his or her license suspended or revoked. I have also learned that in Maryland, which is also a member of the Compact, a driving conviction in Virginia or the District is put on the Maryland licensed driver's record, but the driver does not receive points in Maryland for that out-of-state driving conviction. In Virginia, points are added to a Virginia licensed driver's record for an out of state violation, but there is no suspension or revocation based on the out- of- state violation alone.

Under these circumstances and reconciling all of the applicable statutes and regulations, we have advised the Director, and she has agreed, to give each of the affected individuals an opportunity to be heard or to submit written materials about the full circumstances of their "reckless driving" convictions in Virginia or in other out of DC jurisdictions in the last twelve months. Letters from the DMV will be sent to them in the near future. If they demonstrate either through their submissions or at a hearing, without credible contradiction from authorities or records in Virginia, that the conviction was based on speeding alone, then the revocation will be rescinded and points will be assessed based on the speed in excess of the posted speed limit. This could range from 3 points to 5 points depending upon the excess over the posted speed limit. Of course, if these points when aggregated with previously assessed points within the last two years exceed 10 or 12 points, the license would still be either suspended or revoked.

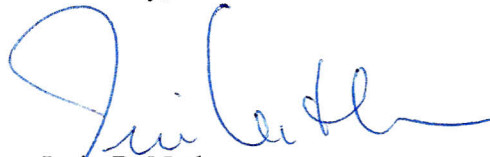
One way for the driver to address the issue is to return to the Virginia authorities to have the "reckless driving" conviction modified to a lesser offense, such as speeding, and to present the revised out-of-state conviction to our DMV, which would then easily be able to rescind the revocation and assign points for speeding instead. However, if time has expired for such relief in Virginia or if other circumstances preclude such action, the DMV can still review the documentation or hold the hearing in the District and assess all of the evidence presented by the driver to determine the basis of the reckless driving conviction in Virginia.

It should be noted that it appears the number of "reckless driving" convictions in Virginia has grown dramatically in the last year or so, exacerbating this problem. Under all of the circumstances, I do think it useful to pursue legislation that brings D.C. 's reckless driving penalties in line with other jurisdictions and clarifies that another jurisdiction's denomination of

a traffic offense does not control, by itself, DMV's decision to revoke a driver's license. With the Mayor's support, our office will commit to working with the Council on legislation that will operate to improve the administration of the motor vehicle laws and the application of the Compact in the District. As you are aware, Councilmember Cheh has introduced Bill 19-823, the "Careless Driving Amendment Act of 2012." While the bill is a good first step, it needs some improvements to give it the effect that your letter suggests is the Council's goal. We share that goal.

Thank you for bringing this matter to my attention, and please let me know if you have any additional questions about this matter.

Sincerely,



Irvn B. Nathan
Attorney General for the District of Columbia

cc: Lucinda M. Babers, Director, Department of Motor Vehicles
Janene Jackson, Director, Office of Policy and Legislative Affairs